M.N. D'CRUZ

v.

K. SETHU & ORS.

HIGH COURT MALAYA, KUANTAN
VC GEORGE J
[CIVIL SUIT NO. 160 OF 1981]
SEPTEMBER 1981

CIVIL PROCEDURE: *Interlocutory Injunction application to restrain committee members of society from continuing to act as such - Whether annual general meeting illegal and void - Whether election void and unconstitutional.*

The plaintiff had caused a writ to be issued against the defendants who were described in the statement of claim as being the purported committee members of the Kuantan Malayalee Samajam which was a registered society. By the writ the plaintiff sought the following orders:

(a) A declaration that the meeting held on 28 June 1981 without the members having first accepted the constitution was void, illegal and of no effect.

(b) Further and alternatively a declaration that the said meeting was void, illegal and of no effect in that the agenda was maliciously amended to adversely affect the plaintiff and his rights as a member.

(c) Further and alternatively a declaration that the election of the defendants is null and void, unconstitutional and of no effect in that it was preceded by a resolution allowing voting by proxy.

(d) An injunction restraining the defendants from doing an act directly or indirectly as the elected Committee members of the said Samajam until the outcome of the suit.

(e) Costs.

(f) Such further or other relief as the Court deemed fit.

Having caused the writ to issue, the plaintiff appeared before the Court on an *ex parte* summons-in-chambers seeking an interlocutory injunction to restrain the defendants and each of them until judgment or further order from continuing to act as committee members of the society.

In his affidavit the plaintiff stated that on 15 July 1979, a group of persons met and elected a number of the defendants as a protem committee who were authorised to draft a constitution for the formation of a society to be known as the "Kuantan Malayalee Samajam". The plaintiff's contentions were:

(a) That though the protem committee was required to call a meeting of that group to have the draft constitution passed and approved, after which it was to be registered with the Registrar of Societies, the constitution was registered as drafted by the protem committee without it being first passed and approved by the group.

(b) That the first annual general meeting of the society was "illegal, void, wrong in law" and ineffective until such time that the constitution was approved and passed by the members (*Henderson v. Bank of Australasia* [1890] 45 Ch. 330 cited.

(c) That members of the protem committee conspired to stop him from being elected at the first annual general meeting by questioning the accounts in connection with certain celebrations before the election of office-bearers and having the plaintiff called "a swindler, pocketing public money and shameful person".

(d) That the defendants accepted votes by proxy for the elections at the first annual general meeting though there was no provision in the constitution of the society to do so.

(e) That the plaintiff and such members of the society who left the first annual general meeting over the issue of proxy voting were being deliberately boycotted in respect of the food and fun fair that was being organised and that they and their children were being deliberately left out from participation in certain cultural activities that had been planned.

Held:

[1] By the learned Judge, V.C. George, on the facts presented to him he was far from satisfied that the plaintiff's case was all so clear and free from objection that on equitable grounds the Court ought to interfere to preserve the *status quo* without waiting for the right to be finally established. The Court will not grant an interlocutory injunction as of course but only where there is no doubt as to the legal rights, though it is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events, only that it should find a case which shows that there is no substantial question to be investigated and finally disposed of.

There was no evidence in the minutes of the inaugural meeting when the protem committee was elected that the protem committee was charged with having their draft constitution passed and approved before being registered. Though the issue was raised by the plaintiff at the first annual general meeting, it was overruled. Even if there had been such a requirement, the annual general meeting was entitled to waive the non-adherence of it and this they appeared to have done by proceeding with the meeting. (*Henderson v. Bank of Australasia* was distinguished).

Furthermore, the plaintiff, by becoming a member of the society, was deemed to have accepted its constitution and was estopped from questioning its validity.

[2] There was no support in law that, because matters that are irrelevant are discussed at a meeting, and because such discussion was caused to be brought about by malice, the whole meeting is "wrongful, illegal and unconstitutional" and should be declared to be of no effect.

[3] Though the plaintiff was on stronger ground regarding his complaint that proxy votes were allowed at the annual general meeting (*Harben v. Phillips* [1883] 23 Ch D 14, 36] his case was weakened by the fact that, after the plaintiff and his supporters had walked out of the meeting on the majority voting in support of a resolution that proxy votes be used, the proxy votes were in fact not used at all.

[4] On the balance of convenience, the plaintiff should not be granted the interlocutory injunction. For if the injunction was granted, the food and fun fair and the numerous cultural activities that were being planned would have to be shelved. On the other hand at the worst, the only injury the plaintiff would suffer if the injunction was refused was the ignominy of not being able to present himself as an office bearer of the society and deprivation of participation in certain activities of the society.

[5] The society should have been made a defendant as the declarations and the injunction sought in the writ and the interlocutory application will materially affect the society (s. 9(c) of the Societies Act noted).

[6] The plaintiff had been guilty of such delay that any rights he might have had in respect of obtaining an interlocutory injunction had been prejudiced. Though the acts complained of had taken place on 28 June 1981, the plaintiff had started doing something about the alleged injury only on 5 August 1981, the application for the interlocutory injunction being filed on 28 August 1981.

[The application was dismissed.]

Cases referred to:
Henderson v. Bank of Australasia [1890] 45 Ch 330
Harben v. Phillips [1883] 23 Ch D

Legislation referred to:
Societies Act 1966, s. 9(c)

For the plaintiff - Mahindar Singh

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Also found at [1982] CLJ 34